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In re Application of :  
GAUTIER et al. :  
Application No.: 09/979,549 : DECISION  
PCT No.: PCT/FR00/01318 :  
Int. Filing Date: 17 May 2000 :  
Priority Date: 17 May 1999 :  
Attorney's Docket No.:ORES10.001APC :  
For: PROMOTER OF THIOREDOXINE TaTrxh2 :  
IN WHEAT :  
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This notification is in response to applicant's "PETITION FOR FILING DATE" filed 20 November 2001 requesting a receipt date of 19 November 2001.

### BACKGROUND

On 17 May 2000, applicants filed international application PCT/FR00/01318, which claimed a priority date of 17 May 1999. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 23 November 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 22 November 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 19 November 2001 (17 November 2001 being a Saturday).

On 20 November 2001, applicants submitted a transmittal letter for entry into the U.S. national stage (Form PTO-1390), which was accompanied by, *inter alia*, the U.S. Basic National Fee. This submission was assigned Application Number 09/979,549. On 20 November 2001, applicants also submitted the instant "PETITION FOR FILING DATE" requesting that the above-identified papers be accorded a receipt date of 19 November 2001 and a "STATEMENT OF JOSE COLUNGA".

### DISCUSSION

In the "PETITION FOR FILING DATE" accompanying the application papers submitted 20 November 2001, applicant requests that the application papers submitted 20 November 2001

be accorded a receipt date of 19 November 2001 because these papers were attempted to be deposited with the United States Postal Service (USPS) by Express Mail on 19 November 2001 but deposit was refused by the USPS.

On 20 November 2001, the United States Patent and Trademark Office (USPTO) designated the suspension of Express Mail service to Washington, D.C. ZIP Codes 202XX through 205XX (e.g., 20231) as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e).

37 CFR 1.6(e) provides:

If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

- (1) Promptly filed after the ending of the designated interruption or emergency; and
- (2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

Petitioner has not established that he was subject to a postal service emergency on 19 November 2001. Specifically, petitioner has not established that any post office refused to accept the deposit of mail for delivery by Express Mail for the application papers mentioned above on 19 November 2001. The "Notification Related to United States Postal Service Interruption, Suspension of the 'Express Mail' Service of United States Postal Service for mail addressed to ZIP Codes 202xx through 205xx" posted on the USPTO web site on 20 November 2001 states that for United States Postal Service interruptions relating to Express Mail, applicant should submit a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail, the statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence, and the statement must be signed in accordance with 37 CFR 10.18. The "STATEMENT OF JOSE COLUNGA" appears to be intended as such a statement but it is insufficient. First, it states that "we" attempted to deposit correspondence by Express Mail but deposit was refused. It is not clear who is meant by "we" since only one person has signed the statement. Also, both the statement and the petition state that deposit was attempted on "Tuesday, November 19, 2001". However, November 19, 2001 was a Monday rather than a Tuesday. There are also several other discrepancies. The "PETITION FOR FILING DATE" and the "STATEMENT OF JOSE COLUNGA" both contain certificates of mailing stating that they were deposited by first class mail on 20 November 2001. However, both of these papers appear to have been submitted by Express Mail in an envelope having Express Mail Label Number EL717638330US. (The Express Mail envelope having Express Mail Label Number EL717638330US is in the application file.) Also, the "PETITION FOR FILING DATE" states that a "complete copy of all the materials in the correspondence is attached hereto." These materials include a "CERTIFICATE OF MAILING BY 'EXPRESS MAIL'" for Express Mail Label Number EL717638330US which includes a certificate of mailing date of 20 November

2001. (This "CERTIFICATE OF MAILING BY 'EXPRESS MAIL'" appears to be part of the materials in the correspondence attempted to be deposited by Express Mail with the USPS but refused. For example, one would expect that if this were a newly prepared "CERTIFICATE OF MAILING BY 'EXPRESS MAIL'" on 20 November 2001, it would have listed the "PETITION FOR FILING DATE" and "STATEMENT OF JOSE COLUNGA". Also, the identifying data in the lower left hand corner of the "CERTIFICATE OF MAILING BY 'EXPRESS MAIL'" below the signature line contains the indication "111601" while the corresponding identifying data for the "PETITION FOR FILING DATE" and "STATEMENT OF JOSE COLUNGA" contains the indication "112001".) This certificate of mailing date appears to be inconsistent with the statement that these materials were attempted to be deposited by Express Mail on 19 November 2001.

Because a receipt date of 19 November 2001 has not been granted for the application papers, the application is abandoned as to the United States of America for failure to pay the basic national fee by thirty months.

### CONCLUSION

For the reasons set forth above, applicant's petition that the application be accorded a filing date of 19 November 2001 in accordance with 37 CFR 1.6(e) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.6(e)." No petition fee is required.

Alternatively, applicants may wish to consider filing a petition under 37 CFR 1.137 to revive the application.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for preparation and mailing of a new NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application is abandoned for failure to pay the U.S. basic national fee by thirty months from the priority date.



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